

Case ID#: 1600649

J.M. Macias, Inc
d/b/a MiCasita Restaurant Mexicano
3837 Ramsey Street
Fayetteville, NC 28312
7C

Headquarters
209 Talleywood Shopping Center
Fayetteville, NC 28303
7C

EIN: 56-1680542

COVERAGE:

Subject firm operates as a full service restaurant. Subject operates and owns 16 restaurants with common control and common business purpose. The subject's enterprise's annual dollar volume of sales for 2008 is EX. 4, 2009 is more than EX. 4, and in 2010 is more than \$ EX. 4 annually. The subject establishment has EX-4 employees. The subject establishment has at least 2 employees who are engaged in interstate commerce by swiping credit cards that are electronically sent across state lines to an out of state holding facility, then sent back across state to be deposited in the owner's bank account. Therefore, all employees are covered under section 3(s)(1)(a) of the FLSA; see exhibits B-1 thru B-3, C-1 thru C-4-a, and D-4.

This is a full investigation. The subject enterprise has 16 locations within the state of North Carolina. The subject's main office is located at 209 Talleywood Shopping Center, Fayetteville, NC 28303. The Raleigh NC, District Office is the MODO. A request for MODO instructions was sent out on 14 June, 2011, and instructions are to proceed locally and contact MODO prior to final conference. WHI discussed violations with ADD Lara on 7/14/2011, BWs were discussed and clearance obtained to proceed to final conference; see exhibits D-4 and D-10 thru D-10-b.

EXEMPTIONS:

Mr. Juan M. Macias is 100% owner and is actively involved in the management of the company, and is therefore exempt from MW and OT in accordance with 29 CFR part 541.101; see exhibits C-1 and C-5.

No other exemptions were applicable.

STATUS OF COMPLIANCE

This investigation was initiated as the result of a [REDACTED] EX. 7C, 7E [REDACTED] [REDACTED], alleged the employer failed pay proper overtime. 7E substantiated. No CL. FMLA covered ER; see exhibit B-1. WHI can not verify the [REDACTED] 7E name because he provided more than one name during the interview. An attempt to contact the [REDACTED] 7E at the number provided was not answered or returned by the [REDACTED] 7E

Pay Practices:

The subject's workweek runs from Friday through Thursday, with payday occurring on a bi-weekly basis the following Friday. FLSA posters are posted. Employees do not clock in or out. All employees are paid on a salary basis. A record of hours worked was not kept on all employees. Employees are required to wear a uniform however they are generic and the employer doesn't specify a brand or type, or steer employees to a place where they must purchase a special type. Employees receive compensated breaks throughout the day; see exhibits B-1 thru B-3, and A-0 through A-0-f, the payroll for period ending 3/09/11 thru 3/22/11, with corresponding pay day of 25 March 2011.

VIOLATIONS:

SECTION 6(a): MINIMUM WAGE:

No violation discovered. Subject paid a flat salary to all employees and worked them more than 40 hours each week, which caused a MW violation, however, the employer was allowed to claim a meal credit for meals provided for free to all employees at the rate of \$4 per meal which when combined with the salary mitigated the MW violation; see exhibits A-1, B-2, B-3, D-8, D-8-a and D-14 thru D-16-a.

SECTION 7(a): OVERTIME:

Violation discovered; Subject paid a flat rate salary to non-exempt hourly employees, however failed to pay the statutory overtime required; see exhibits A-0 thru A-0-f, A-1, B-1 thru B-3, D-5 thru D-5-g.

3 employees are due \$13,751.40 in OT back wages.

Method of computation; Reconstruction of wages from interview statements; see exhibits A-1, and B-1 thru B-3, D-5 thru D-5-g.

SECTION 11(c): RECORD KEEPING:

Violation of 29 CFR part 516; subject employer failed to keep accurate records by not keeping a record of hours worked; see exhibits B-1 thru B-3, and D-6.

SECTION 12(a): CHILD LABOR:

No violations discovered; subject does not hire employees who are below the age of 18; see exhibits B-1 thru B-3.

OTHER LAWS: FMLA-

No violations discovered. Subject is a FMLA covered employer, however did not have a policy. No employees have been denied FML during the investigative period

DISPOSITION

On 23 August 2011, WHI conducted a Final Conference with Mr. Joshua Krasner, Lawyer and representative for the owner Mr. J.M. Macias of MiCasita Restaurant, who from here on out will be referred to as the subjects. Coverage was discussed during the initial conference and the subject disclosed at that time no records were maintained by the employer.

The violations were discussed throughout the investigative period with the ER Rep. The subject failed to pay proper OT and a record of hours worked for employees was not being kept; the subject stipulated to this fact during the initial conference.

The subject elaborated on how the problem had occurred through his representative; who elaborated that the employer was utilizing an accounting firm to accomplish the payroll and perform these

functions.

FUTURE COMPLIANCE: The subject agreed to future compliance and agreed to pay the back wages. The subject agreed to submit a compliance payroll with time cards and records to support compliance.

CIVIL MONEY PENALTIES: Civil Money Penalties are not recommended. This is the 1st Investigation of the subject. The subject was informed that the WHI does not determine whether CMPs are imposed upon an employer. CMPs are imposed at management level and if a CMP is imposed, the subject will receive the information via the U.S. Postal Service.

RECOMMENDATION: Recommend self-audits be assigned to the subject, and upon completion of the payment of back wages, recommend this case be closed. There are no 16(b) rights pending. .

PUBLICATIONS: The Handy Reference Guide and Fact Sheet 44 were provided during the initial conference. 29 CFR parts 516, 541, 778, 785, CL 101 (WH-1330), FLSA Poster, as well as fact sheets #22, #21, #23, #15, and #28 were emailed to the ER rep to provide to the subject at

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on 23 August 2011; see exhibit D-17

Responsible Party:

Mr. J.M. Macias
3837 Ramsey Street
Fayetteville, NC 28312
910-987-8386

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., WHI

23 August 2011